



November 10, 1999

Ms. Marigny A. Lanier
City Attorney
Maris & Lanier
1450 Meadow Park, LB 702
10440 N., Central Expressway
Dallas, Texas 75231

OR99-3203

Dear Ms. Lanier:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128753.

The City of Aubrey (the "city"), which you represent, received a request for the following information:

1. Any document referencing dedication to the Town of Aubrey, or construction or repairs by the Town of Aubrey to the following streets:
 - a. Dane Street;
 - b. Wilson Street;
 - c. Alameda Street;
 - d. Bruce Street;
 - e. Union Street; and
 - f. Blackjack Road.
2. The budgets of the Town of Aubrey for the last 10 years.
3. All resolutions and ordinances of the Town regulating manufactured homes or mobile homes.

4. Any subdivision ordinances or regulations of the Town or other ordinances, resolutions or regulations affecting the development of property in the Town.
5. Any documents regarding the construction or repair of roads, streets, water and wastewater systems within the Town undertaken by the Town within the last 5 years.
6. Any documents reflecting the expenditure of funds by the Town for the construction or repair of roads, streets, water and wastewater systems within the Town within the last 5 years.
7. All plats, variances, correspondence and other documents involving or concerning the Aubrey Family Mobile Home Park also known as the Wilson Mobile Home Park.

You object to the release of only request item 7. You claim that information responsive to item 7 is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code. We assume that you have released the remaining requested information to the requestor. We have considered the exceptions you claim and reviewed the submitted information.

First, you contend that the descriptions of services in the attorney fee bills in Exhibit B are attorney-client communications excepted from disclosure under section 552.107. Additionally, you assert that the descriptions are also attorney work product excepted from disclosure under sections 552.103 and 552.111.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. ORD 574 at 5. Section 552.107(1) does not except purely factual information from disclosure, nor does it protect information gathered by an attorney as a fact-finder. Open Records Decision Nos. 574 (1990), 559 (1990), 462 (1987). Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memoranda sent. ORD 574 at 5. We agree that some of the descriptions are the attorneys' legal advice or constitutes confidential client communications excepted from public disclosure by section 552.107.

You also assert that the descriptions constitute attorney work product. A governmental body may withhold attorney work product from disclosure under sections 552.103 and 552.111

if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. ORD 647 at 4 (1996). The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories. *Id.*

You explain that the city consulted with its attorneys "to obtain ordinance compliance by the owner of the mobile home park and [to pursue] local ordinance enforcement." Moreover, you state the "City Attorney has provided services in connection with preparation for municipal court prosecutions of mobile home park ordinance violations and gathering information and developing of strategy for filing an injunction action against the current owner." We conclude that you have met the work product test for some of the descriptions in the fee bills.

We have marked the information that you must release to the requestor because the marked information is either factual information not excepted from public disclosure by section 552.107 or does not reveal the attorney's mental processes, conclusions and legal theories as required by the work product test.¹ Moreover, because the marked information is information that is in a bill for attorney's fees and is not privileged under the attorney-client privilege, the marked information is public information and not excepted from required disclosure under an exception of the Public Information Act. Gov't Code § 552.022(16).

Next, you contend that the information submitted as Exhibits C-1, C-2, C-3, and D are excepted from public disclosure under section 552.103. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex.*

¹You also assert that section 552.108 excepts the information from public disclosure. Section 552.108 excepts from public disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime. The city is not a law enforcement agency, and you have not explained how the information pertains to a crime. See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision Nos. 80 (1975), 85 (1975), 493 (1988). Thus, section 552.108 is inapplicable in this instance.

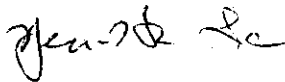
Law Sch. v. Texas Legal Found., 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You inform us that the city has engaged in efforts to enforce the mobile home park ordinance. In fact, you explain that the city has a pending lawsuit against a mobile home park owner. The city seeks to enjoin the defendant from operating a mobile home park without a permit. The city has issued citations to the former and current owners of the mobile home park, and some of the citations are still pending further action. After reviewing your arguments and the information in Exhibits C-1, C-2, C-3, and D, we conclude that you have shown that litigation is pending and that the information relates to the pending litigation. Thus, you may withhold the information under section 552.103.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref: ID# 128753

Encl. Marked documents

²Because we have resolved the matter under section 552.103, we do not address your other claims against public disclosure.

cc: Mr. Christopher J. Caso
Caso & Egelston
10246 Midway Road, Suite 202
Dallas, Texas 75229
(w/o enclosures)